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## Muslims contributions to jurisprudence

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The Muslims made valuable and significant contributions to the disciplines of constitutional law, jurisprudence and law. The Prophet Mohammed (PBUH) promulgated the first ever written constitution for Medina State, which was established as a city-state. The constitution was promulgated in 622 AD or the first year of the Hijrah, migration of the Prophet (PBUH) from Mecca to Medina. This written constitution, prepared by Prophet Mohammed (PBUH), consists of 52 clauses addressing a variety of questions, such as the respective rights and duties of the ruler and the ruled, legislation, subsidiarity, devolution of power, local autonomy, administration of justice, organization of defence, treatment of non-Muslim subjects, social insurance on the basis of mutualism and other requirements of that age.

The earlier civilizations had their particular codes as laws, yet law as a science (abstract in existence and distinct from laws and codes) did not exist before Islam. Jurisprudence is purely a Muslim discovery. Various disciplines of law existed in Rome, Greece, China, India and Iraq long before the advent of Islam, but jurisprudence began with Imam Abu Hanifa's book, Kitab-ul-Rai (Book of Opinions) (AD 767/AH 150). His pupil, Imam Abu Yousaf wrote Kitab al-Usul (Book of Jurisprudence). Imam Shafai (d. 820), for the first time in human history, systematically discussed the cannons of various laws, principles of legislation and the interpretation of laws in his book, Kitab Ar-Risalah-fi-Usul-ul-Fiqh (Book on Jurisprudence).

Muslim jurists explained the significance of 'intention' in law for the first time in legal history. They gave due importance to the concept of 'intention' (niyah) in acts, using as foundation the words of the Prophet: 'The acts have to be judged by intentions (This is the first hadith of Sahih Bukhari, the most authentic canonical book of Sunni Islam after the Quran). The Muslim jurists discouraged the concept of strict liability (culpability without criminal intention) as the doctrine of

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‘niyat’. This doctrine is well established in criminal jurisprudence, as Law does not accept any act as crime without Mens Rea (criminal intention).

For the first time, Muslims started a systematic study of the comparative laws of various nations. They discussed the basic principles of various foreign laws in comparison with Islamic law and also differentiated, jurisprudentially, between various interpretations of the legal aspects of Islam.

The Muslim jurists placed emphasis on the fact of the correlativity of rights and obligations. They emphasized that ‘rights of man’ without simultaneously bringing his corresponding ‘duties’ would be transforming the human being into a rapacious beast, a wolf or a devil.

Islam tries to base law on the likes and dislikes of human nature. It remains to define and distinguish between things good and the evil. The Quran commands certain things that one must do, (ma’ruf) and abstain from others (munkar). Ma’ruf means a good, which is recognized as such by everybody; therefore, is commanded (or preferred), whereas munkar means a thing, which is denounced by everyone; therefore, it is forbidden (or disliked). A very great part of Islamic law is based on this paradigm.

The normal material sanctions behind the law exist in Islam just like in all other legal systems; however, the Prophet of Islam, added another sanction, perhaps more efficacious than the material one, and that is the spiritual sanction. Maintaining all the administrative paraphernalia of the justice system, Islam has inculcated in the minds of its followers the notion of resurrection after death, of Divine Judgment and salvation or condemnation in the Hereafter based on actions in this world; thus the believer is commanded to accomplish his obligations even when he has the opportunity of violating them with full impunity, and he abstains from doing harm to others despite all the temptations and availability of absolute security against the risk of any punishment. The material sanctions and spiritual sanctions, each strengthening the efficacy of the other, try to secure the maximum observance of laws and the realization of the rights and obligations by and for all.

For the Muslims, the Quran is a Divine revelation received by the Prophet Mohammed, (PBUH), the messenger of God, who explained the sacred text and gave further directions recorded

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as the Hadith (a collection of the sayings and actions of the Prophet Mohammed-PBUH). The teachings of the Quran and the Hadith cannot be abrogated. This doctrinal rigidity becomes quite elastic, when it permits humans to adapt themselves to exigencies and circumstances through the doctrine of Ijtehaad and by other means: The laws, even those of Divine origin or emanating from the Prophet, are not all of the same range. Only some of these are obligatory, whereas others are only recommended, allowing great latitude to individuals; the law can be interpreted and the interpretations generate the possibility of adapting the Divine law to special circumstances; the majority has the power to legislate, as and when required, as the Prophet Mohammed (PBUH) has enunciated the rule: ‘My people shall never be unanimous in an error: Mishkat. Vol. 5, Hadith No. 317.

Islam trusts human intellect in making laws. Mu’adh ibn Jabal, a judge-designate for Yemen, paid a farewell call on the Prophet. The following conversation took place at their meeting. On what basis shalt thou decide? According to the Book of God (the Quran)! And if thou do not find any provision therein? Then according to the conduct of the Messenger of God (Mohammed)! And if thou does not find a provision even therein? Then, I shall make an effort with my own opinion’. The Prophet was delighted and exclaimed, ‘Praise be to God Who has guided the envoy of His envoy to what pleases the envoy of God’.

In other words, individual effort based on common sense is not only a means of developing the law, but also a recipient of the benediction of the Prophet. Islam respects the legal autonomy of various communities of citizens. It encourages every other religious group to have its own tribunals presided over by its own judges, in order to have its own laws applied in all branches of human affairs, civil as well as criminal.

Islam introduced the concept of ‘purification of witnesses’ (‘Tazkiyah-al-shuhood’ which means the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness) in the administration of justice among Muslims to determine that a witness is trustworthy. Furthermore, the Quran (24:4) says that, if someone accuses the chastity of a woman and does not prove it according to the judicial exigencies, not only is he punished, but he is also rendered, forever after, to be unworthy of testimony before tribunals.

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Islam sanctioned the customary laws based on Mar'uf, the commonly accepted good, thus widening the scope of law. The concept of Mar'uf allows the Muslims to benefit from the customs and usages that have evolved in a particular community to further their common good. This assimilative behavior enriched Islamic law. Similarly, the Quran (6:84-85) declares that the divine revelations received by the former prophets are valid for Muslims, but their range and scope is limited only to revelations, the authenticity of which is proved beyond doubt:

And We bestowed upon Abraham (offspring) Isaac and Jacob and each of them did We guide to the right way as We had earlier guided Noah to the right way; and (of his descendants We guided) David and Solomon, Job, Joseph, Moses and Aaron. Thus do We reward those who do good. (And of his descendants We guided) Zechariah, John, Jesus and Elias: each one of them was of the righteous'.

War is a breakdown of law and it is a time when one is least expected to behave reasonably and justly. Hence, the sovereigns of warring states have always claimed the privilege to decide the measures to be taken with regard to the enemy. The Muslims for the first time separated public international law from the whims of the rulers of the State and placed it on a purely legal footing. Imam Zayed Ibn Ali, the teacher of Imam Abu Hanifah, in his book, Kitab al-Majmauha, introduced the discipline of International Law. Imam Mohammed Ash-Shaybani wrote two books on International Law: Kitab-us-Sayyar us-Sagheer (A Short Treatise on International Law) and Kitab us-Sayyar-ul-Kabeer (A Long Treatise on International Law). The latter book is as comprehensive as Oppenheim's International Law.

Muhammad ibn al-Hasan al-Shaybani was an Islamic jurist and a disciple of Imam Abu Hanifa and is considered the father of Muslim international law. In his Kitab-us-Sayyar us-Sagheer (A Short Treatise on International Law), he provided detailed guidelines for the conduct of jihad against unbelievers, as well as guidelines on the treatment of non-Muslim subjects under Muslim rule. In his Kitab us-Sayyar-ul-Kabeer (A Long Treatise on International Law), he wrote a second more advanced treatise on the subject, and other jurists soon followed with a number of other multi-volume treatises. They dealt with both public international law as well as private international law.

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It is not true, therefore, to claim that the book *De Jure Belli ac Pacis* written by the Dutch scholar, Hogo Grotius (d. 1645 AD), considered to be father of international law based on natural law, was the first book on International Law, as Imam Mohammed ash-Shaybani (d. 805) wrote *al-Siyar al-Kabir* more than 820 years before Hugo Grotius wrote *De Jure Belli ac Pacis* in 1625 AD.

These early Islamic legal treatises covered the application of Islamic ethics, Islamic economic jurisprudence and Islamic military jurisprudence to international law, and were concerned with a number of modern international law topics, including the law of treaties; the treatment of diplomats, hostages, refugees and prisoners of war; the right of asylum; conduct on the battlefield; protection of women, children and non-combatant civilians; contracts across the lines of battle; the use of poisonous weapons; and devastation of enemy territory. The Umayyad and Abbasid Caliphs were also in continuous diplomatic negotiations with the Byzantine Empire on matters such as peace treaties, the exchange of prisoners of war, and payment of ransoms and tributes.

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